



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Midwest Contractors, Inc.; R.E. Scherrer, Inc.

File: B-231101, B-231101.2

Date: August 8, 1988

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### DIGEST

1. Submission of vendor letter even though required by the solicitation is a matter of responsibility rather than responsiveness; therefore, protester's allegation that bids submitted without vendor letters are nonresponsive is without merit.
2. Protester's new and independent grounds of protest are dismissed where the later-raised issues do not independently satisfy the timeliness rules of the General Accounting Office's Bid Protest Regulations.

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### DECISION

Midwest Contractors, Inc. protests the award of a contract to any other bidder under invitation for bids (IFB) No. GS-04P-88-EX-C0007, issued by the General Services Administration (GSA) for the extension and remodeling of a computer room and for installation of a new uninterruptible power source (UPS) system at the Internal Revenue Service (IRS) Center in Covington, Kentucky. Midwest, as third low bidder, contends that the first and second low bids were nonresponsive because they did not include a proper vendor letter as required by the IFB in connection with servicing the UPS equipment. Midwest also argues that there are other deficiencies in the bids of the two lower bidders.

R.E. Scherrer, Inc., as second low bidder, also contends that the low bid was nonresponsive because it did not include a vendor letter. Scherrer asserts that its bid is responsive, as it did include a vendor letter, and therefore it should be awarded the contract.

We deny Midwest's protest in part and dismiss it in part and we deny Scherrer's protest.

C-42931/136514

The solicitation sought a single base bid price for all the required services and equipment, including the required annual maintenance service for the UPS. In addition, the solicitation instructed bidders to break out and to separately set forth the price for the maintenance services. In connection with this price breakout, the solicitation provided at clause 3.03(b):

"A letter from the vendor of the UPS equipment shall accompany the base bid, and shall offer to supply the required annual services, either directly by the vendor or by an authorized service organization that usually provides service for the vendor. Failure to include this letter from the vendor will make the bid nonresponsive."

The low bidder, Schrudde and Zimmerman, failed to include this letter with its bid. The second low bidder, Scherrer, included a vendor letter which was missing the last two pages.

The protesters argue either that the failure to supply any letter at all with the bid or the failure to supply a complete letter as specified by the solicitation makes a bid nonresponsive and thus unacceptable. GSA contends that the requirement for the vendor letter involves bidder responsibility rather than bidder responsiveness and argues that the letter need not be submitted with the bid but may be submitted at any time prior to award. We agree.

Responsiveness concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with all material terms and conditions of a solicitation. Olympia USA, Inc., B-216509, Nov. 8, 1984, 84-2 CPD ¶ 513. Responsibility, on the other hand, refers to a bidder's apparent ability and capacity to perform all contract requirements. The ARO Corp., B-222486, June 25, 1986, 86-2 CPD ¶ 6.

Here, with regard to maintenance of the UPS, clause 1.4.2 of section 16202 of the specifications provides in pertinent part as follows:

"The contractor shall have full responsibility to provide, install, start-up, warrant, and repair the installed systems for one year after initial start-up; equipment supplier shall provide to the contractor all technical assistance, system start-up, system checkout, and maintenance during installation and the first year after start-up  
. . . ."

By signing their bids without taking exception to this provision, the two lowest bidders agreed to have the supplier of the UPS provide maintenance services for the UPS as described in the IFB specifications. The only purpose of the vendor letter thus was to show that the bidders had obtained a commitment from the supplier of the UPS equipment to provide the necessary maintenance, either itself or from its authorized service organization. It is our view that this type of information is clearly a matter of responsibility since it relates to the bidders' ability to have the maintenance services provided as required by the IFB. The ARO Corp., B-222486, supra. In this respect it is similar to the detailed technical information from the UPS supplier called for by section 16202 of the specifications which, as amended, provides for submission of the information by the contractor after award.

While the IFB did treat the vendor letter as a matter of responsiveness, a contracting agency cannot convert a matter of responsibility into one of responsiveness by the terms of the solicitation. All Clean, Inc., B-228608, Aug. 12, 1987, 87-2 CPD ¶ 154. Therefore, even though the IFB required submission of the vendor letter with the bid, since information bearing on bidder responsibility may be provided any time prior to award, A. Metz, Inc., B-213518, Apr. 6, 1984, 84-1 CPD ¶ 386, the alleged failure of Schrudde and Zimmerman and Scherrer to submit complete vendor letters with their bids had no bearing on the responsiveness of their bids; they may submit a vendor letter after bid opening and before award.

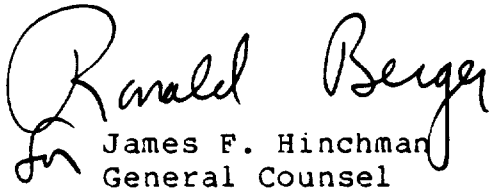
Midwest also alleges a defect in Schrudde and Zimmerman's bid concerning its bid bond. The protester further contends that Scherrer's bid was defective in that it submitted two different bid prices rather than an unqualified price. Both allegations were raised orally at a bid protest conference held in our Office on June 10, 1988, and were not submitted in writing until the protester's comments on the agency report were submitted on June 27. These matters are untimely and will not be considered.

Our Bid Protest Regulations require that a protest be filed within 10 working days after the basis of protest is or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). Further, our regulations provide that if a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 10 days of notice of adverse agency action, provided that the initial agency protest was timely. 4 C.F.R. § 21.2(a)(3).

Here, bids were opened publicly on February 17, 1988, and prior to the April 15 award to Schrudde and Zimmerman, Midwest protested the award based on the failure to provide the UPS letter. By letter dated April 6, the agency denied Midwest's protest and Midwest filed a protest with our Office on April 21. Neither the protest to the agency nor the original protest to our Office mentioned any issue other than the failure of the two lower bidders to provide the UPS letters. Consequently, the fact that an earlier agency-level protest was filed has no bearing on whether these later-raised grounds of protest are timely.

Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements. Our regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. P-B Engineering Co., B-229739, Jan. 25, 1988, 88-1 CPD ¶ 71. Midwest had access to all bids on February 17, and the award was made on April 15. Therefore, these allegations had to be raised within 10 days of the time that it knew of the award. Since the allegations were not submitted until June 27, they are clearly untimely and will not be considered.

Midwest's protest is denied in part and dismissed in part; Scherrer's protest is denied.

  
James F. Hinchman  
General Counsel